

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO

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BRUCE WOODS, :  
Petitioner, :  
vs. : CASE NO.  
WANZA JACKSON, Warden, : 1:00 CV 803  
Respondent. :  
-----

Deposition of: BRYAN PERKINS

Taken: By the Petitioner  
Pursuant to Notice  
  
Date: December 14, 2004  
  
Time: Commencing at 1:00 p.m.  
  
Place: 119 East Court Street  
Cincinnati, Ohio 45202  
  
Before: Sherry L. Music  
Notary Public  
Commonwealth of Kentucky

Ace Reporting Services (513) 241-3200  
30 Garfield Place, Suite 620 Cincinnati, Ohio 45202

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1 APPEARANCES:  
2

3 On behalf of the Petitioner:

4 Gregory W. Meyers, Esq.  
5 of  
6 Ohio Public Defender Commission  
7 8 East Long Street  
8 Columbus, Ohio 43215-2998

9 and  
10

11 T. Kenneth Lee, Esq.  
12 Assistant State Public  
13 of  
14 Office of the Ohio Public Defender  
15 8 East Long Street  
16 Columbus, Ohio 43215  
17 and  
18 J. Joseph Bodine, Jr., Esq.  
19 of  
20 State of Ohio  
21 Office of the Attorney General  
22 Corrections Litigation  
23 150 East Gay Street  
24 Columbus, Ohio 43215  
25

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2

3                   BRYAN PERKINS

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1 BRYAN PERKINS

2 of lawful age, a witness herein, being first duly  
3 sworn as hereinafter certified, was examined and  
4 deposed as follows:

5 DIRECT EXAMINATION

6 BY MR. MEYERS:

7 Q. Bryan, I'm Greg Meyers -- we've introduced  
8 ourselves -- along with Ken Lee and Jim Bodine.  
9 We're here on Mr. Woods' case fresh out of your  
10 distant past. First, as long as you're the one under  
11 oath, please give us your name and date you were  
12 licensed as a lawyer.

13 A. Bryan Perkins. I was licensed as a lawyer  
14 in 1994.

15 Q. Just quick and skip stone rough, what has  
16 been the nature of your practice in the last ten  
17 years now?

18 A. Primarily concentrating on criminal  
19 defense work. I'd probably say 90 percent of my work  
20 has been criminal defense.

21 Q. Misdemeanor and felonies?

22 A. Misdemeanor and felonies, state and  
23 federal.

24 Q. Rough proportion as between the felony  
25 work and nonfelony work?

1           A. Significantly more felony work than  
2       misdemeanor work.

3           Q. How about court-appointed and retained?

4           A. Yes. When I first started I did some  
5       court-appointed work, and then once the business  
6       picked up, probably after five years of practice I  
7       gave up court-appointed trial work. I still do some  
8       court-appointed appellate work but I don't do any  
9       court-appointed trial work.

10          Q. So court-appointed appellate work is  
11       something you have had, at least as part of your  
12       practice, from basically the beginning, around '94,  
13       roughly?

14          A. Yes.

15          Q. Obviously, you know we're here to take  
16       about Mr. Woods, and you were gracious enough to  
17       quite quickly provide us a copy of your old file.  
18       That was a copy you gave to the staff people with the  
19       public defender's office? It was mailed?

20          A. I believe it was, yeah.

21          Q. Do you have the original here in your  
22       office building?

23          A. It would be in storage. If I didn't send  
24       the original then the original would be in storage.

25          Q. When, roughly, if you can recall, did it

1 come to your attention that there was ongoing  
2 litigation over Mr. Woods' case?

3 A. I would guess, roughly, maybe six, seven  
4 months ago.

5 Q. So as far as you knew, after the trial  
6 went on in about '96; do you recall that?

7 A. Yes.

8 Q. Did you have a chance to look over your  
9 file?

10 A. Yes.

11 Q. Anything else you might have looked at to  
12 prep up for the kind of questions you might face here  
13 today?

14 A. Yeah. After I was contacted I checked the  
15 clerk's web site. As far as the trial case and then  
16 also the appellate case, checked the web site on  
17 that.

18 Q. Okay. You and I haven't talked in any  
19 detail except ministerial matters setting up today's  
20 deposition?

21 A. Correct.

22 Q. I think when we were talking just last  
23 week to set the date you mentioned you have talked to  
24 Mr. Bodine?

25 A. Yes, I have.

1 Q. About the merits of the case. So you know  
2 what issues are before us today?

3 A. Yeah, the issue of the appeal, trying to  
4 get them to delay the appeal file.

5 Q. How did you describe your recollections of  
6 Mr. Woods and the work you did for him when you had a  
7 chance to talk to Mr. Bodine?

8 A. I do have a recollection of the case in  
9 and of itself, a vague recollection of what it was  
10 about, and I recall the trial and so forth, and some  
11 of the things that happened after the trial. And  
12 then I pulled what documents I had in the file.  
13 Since then there has been -- the partnership has  
14 split, and so forth. I thought that there was more  
15 to the file than what I was able to recover but  
16 that's all I have been able to find.

17 Q. When we were just social chatting before  
18 we went onto the record here, you mentioned -- was it  
19 the first position you held was with a smaller firm  
20 and now you're solo?

21 A. Originally I was solo, and then I got  
22 involved with a partnership, and then that ended and  
23 now I'm solo again.

24 Q. When you worked for Mr. Woods were you in  
25 your partnership at that point; do you remember?

1           A. I don't recall. If the trial was in '96  
2 it would be close. It would have been right at the  
3 time it started or not being in it yet.

4           Q. Okay. From looking at the file -- and I  
5 think my understanding is you or your staff were able  
6 to send us a photocopy of the original. What you  
7 have looked at -- I see you had copies of handwritten  
8 notes from the trial, the near person seats, the jury  
9 seating chart, the stuff of a trial that was in  
10 there?

11          A. Right.

12          Q. I didn't see anything about the money.  
13 Because you were retained at trial; is that right?

14          A. Correct.

15          Q. And again -- deposition -- so I'll lead  
16 you unless somebody gets angry about it on some of  
17 these little things. You weren't the first lawyer in  
18 line. Do you remember that?

19          A. You mean he was represented by?

20          Q. Yeah.

21          A. Yeah, right.

22          Q. You weren't the first lawyer for Mr. Woods  
23 in the case that went to trial?

24          A. Right.

25          Q. Tell me what you can remember about how it

1 came to pass you were engaged to represent him.

2 A. I would have been -- I believe I was  
3 contacted by somebody in the family and I could not  
4 tell you who, but regarding that they were interested  
5 in having me represent Mr. Woods. I don't remember  
6 exactly what transpired but I would have gone over to  
7 the Justice Center, met with him and talked about his  
8 case and so forth.

9 Q. And justice center, for those who read  
10 this transcript are not familiar with your county's  
11 nomenclature. That's your county jail?

12 A. County jail, yes.

13 Q. Which is across the street but connected  
14 to the county courthouse?

15 A. Right.

16 Q. Where Mr. Woods was held in lieu of bond  
17 on the charges he faced trial on?

18 A. Correct.

19 Q. I meant to make a note of this. Your  
20 office was somewhere on Seventh Street at the time?

21 A. 23 East Seventh Street. And that would  
22 tell me that I was in the partnership at that time.

23 Q. Oh, okay. Of course, we're at 119 East  
24 Court Street but the Seventh Street address is also  
25 within walking distance?

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1           A. Yes, it is. It's just a couple blocks  
2 away from the courthouse.

3           Q. So somehow or the other, do you remember,  
4 was it Bruce that might have called you from jail  
5 collect? Was it a family -- girlfriend?

6           A. It probably was not Bruce if he was  
7 incarcerated. I probably would have talked with a  
8 family member. And I believe in his case most of the  
9 contact I had was with a male family member but I  
10 cannot recall his name.

11          Q. If you recall, what was the financial  
12 arrangement regarding your being retained for this  
13 case?

14          A. I don't recall what the fee would have  
15 been in that case but I would have quoted him a fee  
16 and usually requested that half of that be paid in  
17 advance, at least, and then the balance paid within a  
18 reasonable period of time. What that amount is, I  
19 could guess a ballpark but I couldn't tell you  
20 exactly.

21          Q. Let me show you a document I found in your  
22 file that's not marked yet as an exhibit. Is that  
23 your handwriting?

24          A. Yes, it is.

25          Q. As you scan that, does it spark a

1       recollection as to what that may have noted or  
2       recorded?

3           A.     As it relates to the fee?

4           Q.     And the whole case and possibly the fee.

5           A.     Looks like I would have quoted him a fee  
6       of \$4,000 and asked for fifteen hundred down. That  
7       would have been -- we would have talked and discussed  
8       it. And probably he indicated that he couldn't come  
9       up with two thousand down but probably a family  
10      member could pay fifteen hundred down. That was my  
11      note to myself to recall what we talked about.

12       Q.     As I look at that and was, I think, able  
13      to make out most of your handwriting, would I be  
14      correct that would seem to be a sheet of paper  
15      perhaps recording notes from a first client meeting?

16       A.     That looks like something typical.

17       Because normally I will take down their inmate I.D.  
18      number when I first meet with them.

19       Q.     Inmate's name, the mom's name is there?

20       A.     Right.

21       Q.     These numbers that you've referred to  
22      regarding the retaining amount of money?

23       A.     Right.

24       Q.     It's a smattering facts of facts, very  
25      initial rudimentary outline of a case pattern.

A. Correct.

Q. Let me take this opportunity to do something I forgot at the beginning. I'm trying to think whether we sent -- we did send you a waiver by Mr. Woods.

A. You did.

Q. To make it clear, professional to professional, that you were authorized to share that data with us. Do you understand for purposes of today in this litigation, which is, you're aware, is over the appeal, the waiver is limited. In other words, we're not here today and I would object on his behalf to protect his attorney-client privilege in the event there were facts about the case itself that went to trial.

A. Right.

Q. Anything he might have shared with you directly is not a proper subject for today's deposition?

A. Correct.

(Exhibit 1 was marked for identification.)

Q. Let me mark for identification as Exhibit 1 this single sheet of paper we've discussed. Did you provide Mr. Bodine with a copy of Mr. Woods' file?

1 A. No.

2 Q. Joe, have you seen that?

3 MR. BODINE: No, I haven't.

4 Q. So somewhere -- I think we've refreshed  
5 your recollection a bit -- your working address at  
6 the time was on Seventh Street. And that was, did  
7 you remark, in a partnership affiliation?

8 A. Yes, that address I would have been in a  
9 partnership.

10 Q. Give me a quick overview -- when you say  
11 "partnership" was that you and --

12 A. One other attorney.

13 Q. Support staff?

14 A. Yes. How many we had at the time, I  
15 cannot tell you, but it would have been at least one  
16 secretary, two at the most.

17 Q. How did you handle your money flow back  
18 then? In other words, was it your habit to have a  
19 formal engagement agreement or a retainer contract?  
20 You know, every lawyer has done it different over  
21 time. What was your routine?

22 A. I guess, ideally, I probably had a  
23 contract but I seldom used it. I should have but  
24 sometimes, you know, it is just an agreement that I  
25 will have with my clients.

1           Q.     Sure. I was explaining to my co-counsel  
2 who has never been in private practice, that's the  
3 way the business often runs out there.

4           A.     Correct.

5           Q.     Given your habits and routines, at least  
6 back then -- I'll interrupt myself. I don't think  
7 that's dated, but if I told you other documents came  
8 out of your file -- maybe your recollection, too, was  
9 refreshed. It looks to me like you formally began to  
10 represent Mr. Woods around April of '96. There is  
11 some motion practice bearing your name coming into  
12 the record around April of '96; is that --

13          A.     That would sound about right.

14          Q.     Would it have been your routine and habit  
15 to refrain from formal filing of motions, at least  
16 until you got the amount of the fee that you had  
17 indicated was necessary to get you going?

18          A.     No. Once I would enter my appearance on  
19 the case then I would do whatever was -- I normally  
20 would not enter my appearance on the case until I  
21 was -- at least received the initial retainer.

22          Q.     Once you entered the appearance it was  
23 your practice or routine, professionally, to see it  
24 through?

25          A.     Correct, unless for whatever reason I

1 would file the motion to withdraw or something of  
2 that nature.

3 Q. Right. And such a motion did not appear  
4 in the docket as we were able to see?

5 A. No. I followed it all the way through to  
6 trial.

7 Q. When you looked back over your file were  
8 you reminded of the fact that Mr. Woods had, what at  
9 least in the Federal Rule, I guess would be called a  
10 superseding indictment?

11 A. That is one of the issues that I had not  
12 remembered until I did review the file. And then I  
13 did recall that there was actually some confusion  
14 before the trial began about that issue, and that  
15 brought some memories back.

16 Q. Let me show you -- just so we're on the  
17 same wave length here. These documents I'm going to  
18 show you come straight out of the court file. These  
19 are two of several documents. I noticed,  
20 for example, starting about in early April there  
21 appeared your demands for discovery, bill of  
22 particulars. Here, for example, let me show you  
23 this. We might mark this. Here on April 4, '96, do  
24 you recognize that appears to be a letter from you to  
25 Mr. Woods? He's incarcerated at the time?

1 A. Yes.

2 Q. And it is indicating there is a set of  
3 copies of some motions you're filing?

4 A. Correct.

5 Q. Of course, that confirms, if you will,  
6 that whatever the exact exchange of money for your  
7 time and expertise was you were satisfied by early  
8 April '96 that you would indeed enter and represent  
9 Mr. Woods?

10 A. Correct.

11 Q. And the case number on that letter is  
12 what?

13 A. B 96 1386.

14 Q. 1386?

15 A. Correct.

16 Q. A higher number than B 345, correct?

17 A. Correct.

18 Q. Is it your understanding in Hamilton  
19 County that the case numbering system in the clerk's,  
20 at least at that time, would include the year,  
21 calendar year, the last two digits, then would be  
22 sequentially numbered?

23 A. Correct.

24 Q. So, just to talk more than even the  
25 transcript needs to show, but the 345 is earlier than

1 the -- what did I say? 19?

2 A. 1386.

3 Q. 1386?

4 A. Yes, it is.

5 (Exhibit 13 was marked for  
6 identification.)

7 Q. I'll mark this letter dated April 4, '96  
8 with Exhibit 2. Then, just to elaborate a touch  
9 further, do you notice the two pleadings before you,  
10 each captioned Motion for Continuance, one bearing  
11 the 345 number and one bearing the 1386 number?

12 A. Yes.

13 Q. And the one bearing the 345 number  
14 basically refers by reference to the more detailed  
15 reasons set forth in the 1386 as to why you're  
16 requesting the court to grant a continuance?

17 A. Correct.

18 Q. Did you have a chance to look at -- back  
19 at those indictments to refresh your recollection as  
20 to what the difference was?

21 A. No. I just noticed that there were two  
22 different numbers that related to the same offense  
23 but the exact differences, I did not notice.

24 Q. Again, let's see if I can put my finger on  
25 it quick. Just so someday a reader can make sense

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1 out of this. Just scan, if you would, the 1386, does  
2 that appear to be a copy of an indictment as you  
3 were familiar with the system of Hamilton County back  
4 then?

5 A. Yes.

6 Q. A seven-count indictment?

7 A. Correct.

8 Q. Does this appear to be -- 345, also a  
9 seven-count indictment?

10 A. Yes.

11 Q. Do me a favor real quick. And again, I  
12 appreciate the fact that your relationship with this  
13 case as a witness is far different than we as  
14 counsel. If you check quick between the two would  
15 you note that it would appear the distinction is  
16 they've added the specification of what at the time  
17 was called prior offense of violence to elevate the  
18 potential penalties?

19 A. Yes, it does appear to be that.

20 Q. The first indictment has what was called  
21 then and I guess today, as well -- it's called the  
22 gun spec or gun specification. They decided to up  
23 the ante a bit with the additional spec to increase  
24 the top end of the old penalty system; is that fair  
25 enough?

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1 A. That's correct.

2 Q. So as indicated then by the Motions for  
3 Continuance, you clearly at that time, were aware  
4 that there were numbers but the one that really  
5 merited some attention you were going to trial on was  
6 1386?

7 A. Correct.

8 Q. In your practice, generally, have you seen  
9 that kind of situation where a prosecutor, after a  
10 first indictment, decides to go back to the grand  
11 jury for whatever reason and you wind up with a  
12 situation not unlike what you faced with Mr. Woods?

13 A. I'd say in the state it's not that common,  
14 but yes, I have seen it.

15 Q. Certainly in the federal world the gimmick  
16 is -- maybe a defense lawyer might call it  
17 superseding indictments -- is pretty common in the  
18 federal format?

19 A. That's correct.

20 Q. So here for a long while you were  
21 operating under two case numbers with your primary  
22 focus. If I told you the records would reveal that  
23 your motion practice, your discovery demands bill of  
24 particulars two notices of alibi, one amending --  
25 second amending the first. They were all going in

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1 under the 1386. Does that sound correct or do you  
2 want to go through with these pieces of paper?

3 A. I would agree with that.

4 Q. I think the record will pretty well speak  
5 to that. Do you remember, off the cuff, roughly, how  
6 many trials you would have had before this one? You  
7 were practicing a couple years by then. Or a year  
8 and a half, really. Did you get licensed in the fall  
9 of '94?

10 A. Let me think here. Yeah.

11 Q. Some people are on the spring licensure,  
12 some are on the fall licensure.

13 A. Maybe I was licensed in the fall of '93  
14 because I graduated from law school in the spring of  
15 '93. I took the bar in July. So, yeah, I would have  
16 been licensed for a couple months in '93. I'm sorry.  
17 So I would have been licensed all of '94.

18 Q. So actually you're coming on two and half  
19 a years, rough, of practice by the time the jury is  
20 boxed in, roughly, June of '96?

21 A. Correct.

22 Q. How many trials by then, roughly?

23 A. Do you want me to break it down?

24 Q. Yeah. Some lawyers can go to trial more  
25 often than others. Were you doing two a year or

1       eight a year?

2           A. I'd say it was probably -- probably doing  
3        eight to ten a year.

4           Q. Were you?

5           A. Yeah.

6           Q. That makes for some long hours, doesn't  
7        it?

8           A. Oh, yes.

9           Q. So you weren't, obviously, green any  
10      more --

11       A. No, I would not say I was green at the  
12      time.

13       Q. -- when you took this one to trial.

14      When you looked back over this file and whatever  
15      recollections have been prompted to this very  
16      question, do you recall whether Mr. Woods was the  
17      kind of client who would, for lack of a better  
18      phrase, given you financial trouble? You know how  
19      some clients will cough it up quite quick and stay  
20      true to agreements and others are kind of always  
21      behind on their payments or there's a lot of if-come  
22      promises that never come true?

23       A. I believe there was some problems as far  
24      as getting the tail end of the fee. But other than  
25      that I don't have any specific memories.

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1           Q. Up through about the middle of '96 in your  
2 practice, back then, I think as you have told us, you  
3 were doing certainly more court-appointed trial work  
4 since you eventually got to the position you didn't  
5 need to take any more of that; is that right?

6           A. Right.

7           Q. Good way to build a practice but you can't  
8 hardly pay your overhead with what they pay a  
9 court-appointed. That's certainly true in Franklin  
10 County.

11          A. Right.

12          Q. How about the appellate appointments?  
13 Were those coming in fairly regularly for you from  
14 the very beginning?

15          A. I would say that the appellate was more  
16 limited in the beginning than was the trial. It was  
17 much more trial than it was appellate work,  
18 primarily, because most of my court appointments at  
19 that time came from what they call a PD day where you  
20 would go down to the arraignment court one day out of  
21 the month and they would hand you five or six cases  
22 to deal with at that point. So most of the  
23 appointment cases I did were at a trial level.

24          Q. You had done appeals, though, by after the  
25 first two and a half years of practice?

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1           A. Yes, but I would say that they were  
2 limited. If I had to guess, I'd say probably less  
3 than ten felony appeals in the first couple years of  
4 practice.

5           Q. For what it's worth, certainly in my  
6 experience, I know a lot of trial lawyers will cut  
7 the line. They won't even touch an appeal. You were  
8 willing to do both?

9           A. Yeah, I still do enjoy doing appeals now.

10          Q. Just a lingering thought, a bit redundant:  
11 in the file copy we got I saw a -- but-for what's  
12 been marked Exhibit 1, I didn't see any other notes  
13 that, to my eye, alluded to the finances of the  
14 professional agreement. Would that have been  
15 unusual?

16          A. No, it would not have been unusual. It  
17 probably would have been just verbal agreements.

18          Q. When you would have a discussion with a  
19 trial level client and reach in your own mind, of  
20 course, first this is what this would cost me to do  
21 it, this is what I am worth, here's my fee, and they  
22 agree. In that kind of conversation with a felony  
23 criminal trial defendant, would it have been your  
24 habit to discuss the appellate work in the event  
25 there was a conviction at trial or was that not a

1 topic on the radar screen -- if I could mix  
2 metaphors -- during the first money discussions?

3 A. No, that would not have been discussed at  
4 the trial level. At the most, there would have been  
5 a discussion, well, if I am convicted then what is  
6 the recourse after that. And then I would explain  
7 the appellate process. But I have never talked with  
8 a client -- you know, if you are convicted this is  
9 what the appeal will cost and how it would need to be  
10 taken care of.

11 Q. If nothing else, perhaps on the  
12 professional end and business level it is not good  
13 marketing to tell a criminal felony client you're  
14 thinking about the fact of failure.

15 A. I would always hope that he would not need  
16 an appeal.

17 Q. A lot of folks, I think, that need our  
18 services as felony trial lawyers perhaps might not  
19 take that as a positive sign if we're trying to talk  
20 to them about defeat before we're even really ready  
21 to fight?

22 A. Correct.

23 Q. So discussion about, certainly, the money  
24 end of an appeal would not have come up?

25 A. No, not at all.

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1           Q.     How about afterwards? Afterwards by which  
2     I mean after the jury found him guilty. What do you  
3     remember there in Mr. Woods' case?

4           A.     I remember he was convicted and sentenced,  
5     and I remember we talked and he did want to proceed  
6     on appeal. I did talk to him about what the fee  
7     would be. And then my communications at that point,  
8     then, got back to family members. And if I am  
9     recalling correctly, I was contacted by more than one  
10    person asking, well, what's the fee going to cost and  
11    so forth. Then there was also discussions with the  
12    court reporter about what their cost was going to be  
13    and so forth. And I believe I related that  
14    information to whoever I was speaking to at the time.

15          Q.     Would it have been common or uncommon in  
16    the situation that -- at least as I would imagine it,  
17    hence, the question for you to tell me whether this  
18    is right or not -- but Mr. Woods would have been  
19    shipped out of the county not too long after he was  
20    sentenced?

21          A.     Probably about within 30 days of being  
22    sentenced he would have been sent out of the county.

23          Q.     Back in '96 to one of the correction  
24    reception centers, maybe the one up in Orient, some  
25    distance away?

1           A.    Correct.

2           Q.    And hence, the communication with family  
3       about what comes next would have certainly been  
4       easier, I would imagine, than talking directly with  
5       Mr. Woods?

6           A.    Correct.

7           Q.    Would you take collect calls from him or  
8       other inmates at the time?

9           A.    At one point I did, but I know that on and  
10      off there has been problems with the phone actually  
11      being able to take -- the phone system we had being  
12      able to take incoming calls. I had, originally, when  
13      I set up on Seventh Street my hope was to be able to  
14      do that because, actually, where I was prior to that  
15      was here, and I didn't own the phone system, had no  
16      control of it, so we could not get collect calls  
17      coming through. But even when I moved there was a  
18      period of time there was problems with collect calls  
19      coming in. I would doubt if I ever talked to  
20      Mr. Woods over a collect telephone call.

21          Q.    And in part, again, just to throw it out  
22      for you, I know for some in private practice part of  
23      the collect call issue in addition to the functional  
24      equipment, if you will, is a business -- a legitimate  
25      business concern.

1           A.    Sure.

2           Q.    You can rack up a tremendous amount of  
3 money-taking calls that may just be looking for free  
4 comforting time on the phone.

5           A.    And that was a problem I ran into once we  
6 got the bugs worked out and collect calls were coming  
7 in, then the word got around at the justice center,  
8 this office accepts collect calls and everybody was  
9 calling for free advice. So it really didn't work  
10 out that well.

11          Q.    So in the time frame around the summer of  
12 '96 you didn't have the equipment capacity to receive  
13 the collect calls?

14          A.    I believe, since that was close to the  
15 time of moving into that building, there were  
16 problems with collect calls being able to come in.  
17 So I don't believe I had the capacity to receive  
18 collect calls at that time.

19          Q.    Then when you eventually did -- and I  
20 think we had our little, kind of, agreement that then  
21 you can get that money issue going, if there's too  
22 many people coming in it ties up the phone. And lot  
23 of folks have never been in private practice don't  
24 realize the money hit and the time hit?

25          A.    Correct.

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1           Q.   Was that phenomenon or that experience  
2   over on Seventh or did that occur when you got over  
3   here?

4           A.   No, I never had that problem here because  
5   however the system works here, those calls don't come  
6   through. So I don't get collect calls at this  
7   location.

8           Q.   How long did you stay at the Seventh  
9   Street location? When did you move out of there, if  
10   you can remember?

11          A.   A close guess would be 2000 to 2001. That  
12   was when the partnership ended. And then I would  
13   have moved back here.

14          Q.   And it started up around the time, you  
15   think, of this trial? Around '96 sometime that you  
16   would have been at that address?

17          A.   Yes.

18          Q.   Was there a time there, then, at the  
19   Seventh Street address where the equipment issues  
20   relative to collect calls were resolved in favor of  
21   your ability to receive them and then sort of the  
22   flood of collect calls caused what? A change in the  
23   way you would instruct your staff on your own with  
24   respect to accepting those calls?

25          A.   Correct. I can't tell you the date that I

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1 would have been starting to be inundated with collect  
2 calls. But it probably would have been in '97 or  
3 '98, I'd say, I know it was working and there became  
4 problems with it.

5 Q. Problems of volume?

6 A. Correct. Correct. And then essentially  
7 how we dealt with it was the staff would not accept a  
8 collect call unless one of us told them in advance  
9 that somebody may be calling. This is their name.  
10 We want a collect call. If they weren't instructed  
11 to accept it then it was declined.

12 Q. Do you have a recollection one way or  
13 another whether you would have ever instructed your  
14 staff to accept a collect call from Mr. Woods?

15 A. I have no recollection of that but I  
16 really have no recollection of having any discussions  
17 with Mr. Woods on a collect-call basis. It could  
18 have happened but I just don't recall that.

19 Q. A bit ago you mentioned how -- relative to  
20 what got marked as Exhibit 2 and the letter of early  
21 April '96 and then some of the motion practice, that  
22 those type of activities, understandably don't occur  
23 until you're satisfied on the business end. You're  
24 not just flat out giving your time away unless it's a  
25 case you want to play pro bono on. Otherwise you're

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1 not going to move until you have been paid. At least  
2 something towards your ultimate fee?

3 A. Correct.

4 Q. And I take it the same would be your  
5 business practice with respect to appellate work?

6 A. Correct.

7 Q. And this is -- Mr. Woods is a case, I  
8 think you said you do recall after the trial  
9 conviction having conversations, certainly with him.  
10 At least one, maybe? Did you have a conversation  
11 with him at least he was aware of his right of a  
12 appeal, I take it?

13 A. Yes.

14 Q. And he made it clear he wanted an appeal?

15 A. Correct.

16 Q. Again, understanding the limit that --  
17 privilege here. And I don't mean to poke a hole in  
18 the tale, he either told you or didn't tell you, but  
19 I take it he wasn't too happy he got convicted?

20 A. Correct.

21 Q. He obviously wasn't unhappy with you. He  
22 wanted to you keep fighting for him on the appellate  
23 level?

24 A. Correct.

25 Q. And then there were conversations with, as

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1 you generally recall -- this is eight years ago now,  
2 eight-plus years?

3 A. Correct.

4 Q. Coming back to the summer of '96, there  
5 were conversations probably with more than one person  
6 on his behalf?

7 A. I believe there was, yes.

8 Q. And the fact that one person was a male  
9 sticks out a bit?

10 A. That does. For the life of me I couldn't  
11 tell you what his name was, but I do recall that at  
12 least one of the individuals I dealt with was a male.

13 Q. And would you have created another Bruce  
14 Woods file, per chance, for appeal versus the file we  
15 got from you?

16 A. Eventually if I would have been retained  
17 and followed through with the appeal there would have  
18 been another.

19 Q. You would have briefed the whole thing up.  
20 But in this type of situation, from what you saw in  
21 your file that got copied for us, is it your  
22 testimony that you would not have created a separate  
23 appellate file?

24 A. In this situation, no, I would not.

25 Q. I saw nothing, as I think we've already

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1 mentioned with respect to Exhibit 1, at least to my  
2 eye -- and this was the only document that seemed to  
3 have reference to retainer fee. And I should stop to  
4 say, of course, I make this mistake as a lawyer. I  
5 am not testifying, you are. And you've got to tell  
6 me if you want to stop and look at your original or  
7 look at what we brought again. But my precise  
8 question is, do you recall or is there a notation  
9 somewhere about the money discussions relative and  
10 relevant to retaining you to do the appeal?

11 A. No. When I looked through the file there  
12 was not anything regarding the financial arrangements  
13 regarding the appeal. I probably would have  
14 discussed it with him and not made a note of it.

15 Q. Do you have a recollection of what the fee  
16 structure would have been for the appeal?

17 A. Not specifically. It probably would have  
18 been somewhere from six to eight thousand, just going  
19 back in my memory of what I was charging at that time  
20 for what I would ask for on an appeal. But I don't  
21 have any -- I couldn't tell you specifically. I told  
22 them, this is the amount for the appeal. This is how  
23 much I need up front. This is how much I need for  
24 the court reporter. I do not have a recollection of  
25 that.

1           Q.   Would you have normally discussed an  
2 appellate fee in a lump sum or would you have said  
3 something like six to eight grand, plus the  
4 transcript? Or would you have understood in your own  
5 head out of the six to eight you will wind up paying  
6 for the transcript?

7           A.   No, I would have separated out whatever  
8 the -- it would have been six to eight for the appeal  
9 plus the course of the transcripts.

10          Q.   So given the time investment of doing a  
11 direct appeal, that six to eight appears to be more  
12 than what you expected for your trial?

13          A.   Correct.

14          Q.   And your recollection, I think earlier was  
15 if there were money problems -- when I asked you the  
16 question does Bruce ring a bell in your recollection  
17 as a money problem where you got it quick and got it  
18 up front -- I think you remarked that maybe towards  
19 the end the money wasn't coming in the way you had  
20 expected it to come in?

21          A.   Yeah. Maybe, and that's just sticking out  
22 in my mind, but I couldn't tell you how much he still  
23 owed on that amount. But again, that wouldn't have,  
24 obviously, whatever he paid, satisfied me to take  
25 care of the trial aspect of it.

1 Q. Sure. I mean, you did not move to  
2 withdraw?

3 A. No.

4 Q. I think most judges understand that a  
5 lawyer in private practice often does face a  
6 legitimate need. You can't go through a coerced pro  
7 bono, is what I used to call it.

8 A. Right.

9 Q. You feel the tug as a professional because  
10 you're in the case, but you can't afford a full blown  
11 felony trial as a freebie?

12 A. Correct.

13 Q. So, was it Judge Cooper, was this judge?  
14 I'm sorry.

15 A. Connor.

16 Q. Would he have been the kind of judge who  
17 would have entertained a motion to withdraw on that  
18 reason?

19 A. I don't believe he would have. What I  
20 recall, because I remember coming onto the case and  
21 when the case was set for trial, and I do recall the  
22 judge not being happy at all about continuing the  
23 case. I do remember -- that sticks out in my mind.  
24 So I think had I come to him and said, hey, I would  
25 like to withdraw, but really have no recollection of

1 me even having the desire to do that.

2 Q. I saw from the file and, of course, the  
3 superseding indictment talks about the specification  
4 of the prior offense of violence. So by the time you  
5 were representing Mr. Woods he had at least a robbery  
6 conviction when he was in his late twenties, I  
7 believe 29?

8 A. Yes.

9 Q. Sometimes -- I assume it would be your  
10 experience -- sometimes when you are in private,  
11 being retained, you know the money is coming from the  
12 guy you're actually representing and sometimes you  
13 know it is coming from somebody else?

14 A. Right.

15 Q. I trust you have had that experience?

16 A. Correct.

17 Q. At times that can be in the inner phase,  
18 where you've got to make sure the money payer knows  
19 you represent the client, not the money, so to speak?

20 A. Correct.

21 Q. In this case do you have a recollection as  
22 to whether Mr. Woods himself that he was doing some  
23 part time low-end legal work? I don't know what else  
24 he did. I'm not asking.

25 A. No, it would have came from a third party.

1 I'm almost certain it would not have come from him.

2 Q. But for -- the word benefactor is probably  
3 inappropriate here because lot of people have friends  
4 or family who would want to help them when it comes  
5 to hiring us as lawyers. But he himself, basically  
6 would have been the profile of an indigent but for  
7 the benefactor?

8 A. Correct.

9 Q. And that remained true -- if that were  
10 true, at the trial stage when he was in jail in lieu  
11 of, I think the record shows a \$200,000 bond, it was  
12 all the more true after being convicted and walloped  
13 pretty hard on the sentencing end of this thing?

14 A. Correct.

15 Q. By that time you had done appointed  
16 appellate work?

17 A. Yes.

18 Q. So you knew that drill, I take it? It  
19 wasn't your first appeal?

20 A. No.

21 Q. You knew what it takes to perfect an  
22 appeal in terms of notices of appeal and copies of  
23 judgments appealed from?

24 A. Correct.

25 Q. Had you worked appointed appeals before as

1 well as appointed trials?

2 A. I would have. I couldn't venture to tell  
3 you how much, but there would have been some, yes.

4 Q. And again, on a collegial basis, to the  
5 extent we can, there are a lot of trial lawyers won't  
6 touch an appeal. You knew how to do both.

7 A. Correct. I like to think I know how to do  
8 both.

9 Q. There you go. Nobody is perfect. So here  
10 there was a notice of appeal filed?

11 A. Correct.

12 Q. You have looked at these records?

13 A. Correct.

14 Q. You know there's a problem with that?

15 A. Correct.

16 Q. Do you know what the problem is?

17 A. The problem is it was filed under the  
18 wrong case number.

19 Q. When did that come to your attention?

20 A. When I was reviewing the file six or so  
21 months ago.

22 Q. Sort of another kind of what seems to be  
23 series of -- I don't know if a problem is the word or  
24 it looks like -- have you seen all of those papers in  
25 the appellate record or you want me to hand you a

1 stack of them?

2 A. I recall reviewing the Notice of Appeal.  
3 I don't recall reviewing other things but I probably  
4 did. I know there would have been a docket statement  
5 because I remember talking to the court reporter  
6 about the docket statement.

7 Q. Eventually -- and again, to talk,  
8 sometimes at least I want to err on the side of  
9 knowing a reader someday might read this first and  
10 not the whole rest of the file. But eventually,  
11 do you now understand that the first lower case  
12 number 345 was eventually nollied out, or dismissed  
13 out?

14 A. Yes.

15 Q. And that didn't even happen until you were  
16 in trial?

17 A. Correct.

18 Q. Again, I have run into that before.  
19 Everybody, the judge included, is looking at 1386 and  
20 it looks like right at the end of the trial.  
21 Probably a prosecutor finally realized we've got to  
22 clean this up, Judge, let's get rid of this case?

23 A. Correct.

24 Q. All the motions had all been in in the  
25 1386, what have you, and it's dismissed out, and

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1 obviously he is convicted. And court files will show  
2 us what I am showing you for reference point here.  
3 Under 1386 on June 14 of '96, the sentencing entry  
4 went on and that starts the clock ticking for appeal?

5 A. Correct.

6 Q. Eventually -- other than, sort of, what  
7 we've discussed and I have poked around in terms of,  
8 you know, Bruce is shipped out, or if he is over  
9 there you've got that collect call block thing going  
10 on from the equipment issues, you remember talking to  
11 a man, maybe more than one person about ponying up  
12 the fee for direct appeal for Bruce's conviction?  
13 Any other recollections along that sort of  
14 post-conviction time line that you want to bring out  
15 here today?

16 A. The only other recollection I remember is,  
17 like I said, going to the court reporter, getting the  
18 docket statement filed and her indicating, hey,  
19 before I do anything I need this money up front. And  
20 then that information being related to whoever I was  
21 dealing with. That's about all I have a recollection  
22 about that post conviction sort of period.

23 Q. Okay. Because the appellate clock starts  
24 ticking on the 14th and then a Notice of Appeal is  
25 filed on July 12th?

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1           A.    Correct.

2           Q.    That's got your Seventh Street address on  
3       it. You would have had secretarial-type support at  
4       the time?

5           A.    Yes.

6           Q.    Were you computer savvy, as they say in  
7       the trade? Were you generating a lot of your own  
8       stuff or were you relying on delegation of duty?

9           A.    At that time relying more on support  
10      staff. Eventually I had learned to become more  
11      computer savvy, but at that time I would have been  
12      relying on support staff.

13          Q.    I noticed somebody cut and pasted this  
14      out. It's got Bruce, it's got the original, the  
15      first case number and inadvertently, as we all do at  
16      times, has a different client in the text. It hardly  
17      matters. But I guess what does matter though is it  
18      tapped into the wrong procedural pipeline with the  
19      wrong case number?

20          A.    Correct.

21          Q.    But it was filed on time?

22          A.    Yes.

23          Q.    July 12. This wasn't even filed in until  
24      the month before. So at least something is rolling  
25      there to indicate at that point, an intention to